

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 68817

Petitioner:

BRINGLE FAMILY TRUST,

v.

Respondent:

SUMMIT COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 14, 2016, Sondra W. Mercier and Amy J. Williams presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Franklin Celico, Esq. Petitioner is protesting the 2013, 2014 and 2015 classification of the subject property.

Petitioner and Respondent stipulated to admission of all exhibits including Petitioner's Exhibits 1-8 and Respondent's Exhibits A-L.

Description of the Subject Property

**Lot 85, Block 5, Bills Ranch Subdivision,
Lots 85-87 and Lots 101-102
Summit County Schedule No. 6501727**

This appeal involves the relationship between two legal and platted residential lots located in the Bills Ranch Subdivision in Summit County, Colorado. The subject is a vacant, buildable residential lot classified as *vacant land* by Summit County, hereafter identified as Subject Lot. This lot contains 0.487 acres, is treed, generally rectangular in shape, and mostly level in topography. Access to this parcel is via a public right-of-way identified as E. Opher Lake Road. County records indicate that this lot is owned by the Bringle Family Trust. There are no residential or recreational improvements on this lot as of the assessment date, though an unusable outhouse exists.

Bringle Family Trust owns an additional residential lot, which is not a subject of this appeal, located at 72 E. Opher Lake Road, hereafter identified as Residential Lot. Unlike the Subject Lot, this lot is improved with a 1,206-square foot residence and is classified as *residential property* by Summit County. The improved parcel consists of 1.11 acres and access to the Residential Lot is via E. Opher Lake Road as well.

The Subject Lot and the Residential Lot are located across E. Opher Lake Road from one another. As previously stated, E. Opher Lake Road is a public right-of-way, though maintained by the Bills Ranch Subdivision Association.

The value of the subject is not in dispute; the parties only dispute the classification of the subject during the 2013-2015 tax years. Respondent has placed vacant land classification on the subject during the 2013-2015 tax years. Petitioner argues that the subject parcel should be re-classified as residential land during the tax years in question.

Applicable Law

Section 39-1-102(14.4), C.R.S. defines “residential land” as:

“...a parcel or **contiguous** parcels of land under **common ownership** upon which residential improvements are located and that is **used as a unit** in conjunction with the residential improvements located thereon ...” (Emphasis added).

The Property Tax Administrator (PTA) interprets Section 39-1-102(14.4), C.R.S. to mean that “[p]arcels of land, under common ownership, that are contiguous and used as an integral part of a residence, are classified as residential property.” See Assessors Reference Library (the ARL), Volume 2, Section 6.10. Citing *Sullivan v. Denver County Board of Equalization*, 971 P.2d 675 (Colo.App.1998) and *Fifield v. Pitkin County Board of Commissioners*, 292 P.3d 1207 (Colo.App.2012) the PTA adds that the primary residential parcel must conform to the definition of residential real property as defined in Section 39-1-102(14.5), C.R.S.

Further, the Property Tax Administrator, *see* ARL, Vol. 2, Section 6.10-6.11 titled “Special Classification Topics; Contiguous Parcels of Land with Residential Use,” emphasizes that the assessor’s judgment is crucial in determining if contiguous parcels can be defined as residential property and that a physical inspection provides information critical to the determination whether a contiguous lot can be classified as residential. Moreover, the PTA suggests several judgment criteria to be considered when making such a determination:

- Are the contiguous parcels under common ownership?
- Are the parcels considered an integral part of the residence and actually used as a common unit with the residence?
- Would the parcel(s) in question likely be conveyed with the residence as a unit?
- Is the primary purpose of the parcel and associated structures to be for the support, enjoyment, or other non-commercial activity of the occupant of the residence?

The Property Tax Administrator’s interpretation of statutes pertaining to property

taxation is entitled to judicial deference as the issue comes within the administrative agency's expertise. *Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 16-22 (Colo. 1996) ("Judicial deference is appropriate when the statute before the court is subject to different reasonable interpretations and the issue comes within the administrative agency's special expertise.")

The Colorado Court of Appeals has cited favorably the PTA's interpretation of the statutory definition of "residential land" per Section 39-1-102 (14.4), C.R.S. as well as the PTA's proposed "judgment criteria" that assessors must consider when determining whether contiguous parcels are residential land. *Fifield*, 292 P.3d 1207.

Moreover, the procedures contained in the ARL promulgated by the Property Tax Administrator pursuant to Section 39-2-109(1)(e), C.R.S. are binding upon county assessors. *Huddleston*, 913 P.2d 15, 16-22.

Evidence Presented Before the Board

Petitioner's first witness, Travis Stuard, Senior Associate with Duff & Phelps testified to the contents of Petitioner's Exhibits 1-8. Mr. Stuard stated that both parcels have independent legal access and the Subject Lot can be independently developed with a residential improvement. Mr. Stuard testified that he had visited the Subject Lot and the Residential Lot in February and September of 2016. Referring to Petitioner's Exhibits 1 and 2, he reviewed the parcel map of the subject and several photos of both the Subject Lot and the Residential Lot. He also indicated that the Bringle Family did not complete the questionnaire identified as Exhibit 5 because the questions were deemed to go beyond the Assessor's statutory authority. When asked by the Board, Mr. Stuard confirmed that the outhouse was located on the Subject Lot. He also testified that he did not believe the outhouse was functional.

Petitioner called Mr. Chuck Bringle, owner representative of the Bringle Family Trust, to testify as a second witness. Mr. Bringle testified that he and his wife live in Arvada and, along with their children and grandchildren, use their Summit County property as a vacation home. Mr. Bringle stated that his parents purchased the Subject Lot in 1950 and later acquired the Residential Lot in 1960. The Subject Lot was originally improved with a residential structure. However, they relocated the residence across E. Opher Lake Road to the property now identified as the Residential Lot so that the residence could be expanded. The location of the residence on the Subject Lot did not allow for a desired leach field as it was located too close to the neighboring residence.

Mr. Bringle testified that both lots were purchased by his parents and were willed to him and his brother upon their death. After the passing of his brother in 2010, both lots were transferred into the Bringle Family Trust. In further testimony, Mr. Bringle stated he and his family play on the Subject Lot, maintain the lot, enjoy the view provided by its location across the road from the residence, enjoy the wildlife on the lot, cut firewood and have planted several trees on the lot. His grandkids play hide and seek, shoot bows and arrows and drive a tractor on the lot, and other than the unusable outhouse, no improvements are located on the Subject Lot. When asked if the split rail fence located between the Residential Lot and the road interfered

with the use of the Subject Lot, he responded it did not. The split rail fence had been constructed to prevent the UPS truck from turning around on his property. He also testified that no part of the Subject Lot was used for commercial purposes or agricultural purposes. The only use of the Subject Lot was for residential purposes.

Regarding E. Opher Lake Road, Mr. Bringle testified that it is used by his neighbors for access and that traffic consists of five to six cars daily. He stated that the Bills Ranch Subdivision HOA maintains the road. While the road separates the Subject Lot and the Residential Lot, he and his family consider the lots to be one property, each lot being essential to the other. Additionally, he has no intention to sell the Subject Lot apart from the lot upon which the residence is located. On cross examination, Mr. Bringle indicated he had not considered placing restrictions on the Subject Lot to prohibit development.

Respondent presented the testimony of Michael Petersen, Certified General Appraiser with the Summit County Assessor's Office. Mr. Petersen testified to the contents of Respondent's Exhibits A-L and stated he has inspected the Subject Lot many times. Mr. Petersen testified that E. Opher Lake Road is a public right-of-way, but as it was not constructed to county standards, it is maintained by the Bills Ranch Subdivision HOA. His research indicated that Lot 86, now a part of the Subject Lot, was purchased in May of 1950 and the cabin was constructed in 1951. Tract 85 and 87, also now part of the Subject Lot, were purchased in July of 1950. Finally, Lots 101 and 102, again a part of the Subject Lot, were acquired in 1957. All of the lots, including the Residential Lot, were combined into one Assessor account in 1980, with the cabin improvement being relocated from the Subject Lot to the now identified Residential Lot across E. Opher Lake Road in 1988. In 1995 the subject and the Residential Lot were replatted into two separate parcels, identified as Lots 85 and 87, Bills Ranch Subdivision, as opposed to the six parcels originally acquired.

Mr. Petersen testified that the Subject Lot and the Residential Lot are not contiguous per the plain meaning of the word contiguous. Further, there was no evidence of any residential use and that if the outhouse were functional, that use would be an illegal use. He stated that the highest and best use of the Subject Lot is for development of a single-family home, and that residential development in Bills Ranch Subdivision supports this determination given that of the 118 subdivision lots only 13 remain vacant. Considering the pressure on vacant lots in the area, it would be atypical to transfer both the Subject Lot and the Residential Lot together. He knew of no development restrictions on the Subject Lot and saw no evidence that the Subject Lot is integral to the Residential Lot, nor did he find evidence that the Subject Lot contributed to, or supported, the residential use in any way.

On cross examination, Mr. Petersen testified that he saw no evidence of use and that he did not consider children playing or view protection/buffer to be a residential use. He stated that he is required to follow the guidelines of the Assessor Reference Library (ARL) and that the ARL instructs that a vacant lot must be integral to the residential use to be reclassified as residential. His analysis indicated that the subject Residential Lot would have the same use and enjoyment without the subject vacant lot, and that a passive use is insufficient to support a reclassification. He reiterated that there is no evidence of any use on the Subject Lot. Mr. Petersen further testified that classification is determined based upon actual use as of the

assessment date and that classification helps to determine highest and best use. When asked if Summit County made exceptions to the requirement of contiguity for residential classification, Mr. Peterson stated that exceptions are made when there are actual improvements located on the property. He cited an example of a residential garage located across an alley from the residence. Mr. Petersen agreed that there is a discussion of both integral use and contiguity within the ARL relative to agricultural use and classification, but felt that it was inapplicable to residential use and classification.

The Board's Findings

The burden of proof in BAA proceedings is on the taxpayer to establish the basis for any reclassification claims concerning the subject property. *Home Depot USA, Inc. v. Pueblo Cty. Bd. of Comm'rs*, 50 P.3d 916, 920 (Colo. App. 2002). The Board finds that Petitioner failed to meet its burden of proving that the subject meets the definition of "residential land" which is defined in Section 39-1-102(14.4), C.R.S. as "a parcel or **contiguous parcels** of land under **common ownership** upon which residential improvements are located and that is **used as a unit** in conjunction with the residential improvements located thereon." (Emphasis added).

Common ownership

The parties had entered into a stipulation that there is a commonality of ownership between the Subject Lot and the Residential Lot. Pursuant to the County records, both parcels are owned by Bringle Family Trust.

Contiguity

The contiguity of the Subject Lot and the Residential Lot is in dispute. Factually, the two lots are separated by E. Opher Lake Road, a public right-of-way. They do not touch at any point or along any boundary. Petitioner points to *Douglas Cty. Bd. Of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996) to support its assertion that the two parcels are "sufficiently contiguous" to constitute a single "functional parcel" for residential classification purposes. Petitioner opines that *Clarke* offers instruction to the Board, wherein natural geography, man-made boundaries such as fences, and the integrated or conflicting uses of the respective legal parcels be taken into consideration, not simply whether the parcels are "touching." While the Board concurs that physical characteristics and integrated or conflicting uses may render two parcels which do not "touch" to be "sufficiently contiguous" to constitute a single parcel for residential classification purposes, that is not the case in the subject instance. When two parcels are not physically connected, i.e. contiguous, further analysis of integrated use is heightened. The Board was not persuaded that the use of the Subject Lot in conjunction with the Residential Lot was sufficient to defeat the plain meaning of contiguity.

Additionally, the history of the property was found to be helpful in determining Petitioner's own view of contiguity. The subject was originally acquired as six separate, legally described lots. In 1995, the Subject Lot and the Residential Lot were re-platted with E. Opher Lake Road being the logical separator. The Board believes Petitioner recognized at that time the distinct and non-contiguous nature of the property as separated by a public right-of-way when

deciding the optimal reconfiguration of six legal lots.

Use

The Board is not persuaded that the subject parcel is used as a unit in conjunction with the Residential Lot. The Subject Lot is heavily treed and naturally vegetated, evidencing no sign of usage of any kind. There is an outhouse located on the Subject Lot, however, both parties testified that it was unusable. The Board is not persuaded that the uses identified by Petitioner constitute “use in conjunction.” Petitioner did not convince the Board that Petitioner’s ability to enjoy the uses would be negatively impacted should the Subject Lot be developed or should the Subject Lot not exist at all. Additionally, the Board did find Respondent’s testimony as to evidence of use, or the lack thereof, persuasive, and the Board did not find Petitioner’s testimony as to use persuasive. No other convincing evidence of use which reasonably connect the Subject Lot to the Residential Lot was provided by Petitioner.

The Board finds that under the facts presented the Subject Lot is not used as an integral part of the residence located on the Residential Lot.

The Board finds that Respondent correctly applied Section 39-1-102(14.5) and the procedures contained in the ARL, which are binding upon the county assessors, *see Huddleston v. Grand County Board of Equalization*, 913 P.2d 15 (Colo. 1996), in determining that the Subject Lot does not meet the definition of residential property.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2013, 2014, and 2015.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent. Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a

notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 25th day of January, 2017.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra Mercier

Amy J. Williams

Amy J. Williams

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Eishchuk

Milla Eishchuk

